IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 53 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOSAI SAMBHUPURI NATHUPURI

Versus

THAKKAR VALJIBHAI VAJERAM SICNE DECD. THRO' HIERS

Appearance:

1. Civil Revision Application No. 53 of 2003

MR MB PARIKH for Petitioner No. 1-3

..... for Respondent No. 1

MR YOGESH S LAKHANI for Respondent No. 1/1-1/4

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 29/07/2003

ORAL JUDGEMENT

1. Rule. Mr.Y.S.Lakhani, learned advocate waives service of rule on behalf of respondents.

2. Gosai Sambhupuri Nathupuri and others, petitioners - original plaintiffs have filed this Civil Revision Application under Section 115 of the Code of Civil Procedure challenging the order dated 16th April, 2002, passed by the learned Civil Judge (J.D.), Harij in Regular Civil Suit No.5 of 1999. The learned Judge has held that in this case Thakkar Valjibhai Vajeram - original defendant has died during the pendency of the proceedings. The plaintiff filed an application Exh.25 for bringing heirs and legal representatives of the deceased Thakkar Valjibhai on the record. The trial court granted the said application on 12th February, 2002. However, after that order, the heirs and legal representatives of the deceased could not be brought on record in the cause title. The trial court held that as the plaintiff did not carry out the order of the court, the application for amendment has been rejected in this behalf.

3. Mr.M.B.Parikh, learned advocate for the petitioner has relied on the judgment of the Bombay High Court in the case of H.H.Darbar Alabhai Vajsurbhai and others Vs. Bhura Bhaya and others reported in AIR 1937 Bombay 401 where the Bombay High Court has held that under Order 22 Rules 2, 3 and 4 of the CPC in the case of death of respondents the order of court for substitution of names could be granted and it is not the duty of appellants to take steps to carry out the said order to correct record of the court.

4. In view of the same, this Civil Revision Application is allowed. The impugned order dated 16th April, 2002, passed by the learned trial Judge in Regular Civil Suit No.5 of 1999 is quashed and set aside. The learned trial Judge is requested to hear the matter on the merits of the matter and decide the same in accordance with law. Rule is made absolute with no order as to costs. Direct service is permitted.

(K.M. Mehta, J.)

syed/